

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X  
WHITE PLAINS HOUSING AUTHORITY,

*Plaintiff,*

v.

GETTY PROPERTIES CORPORATION; TYREE  
ENVIRONMENTAL CORPORATION; SINGER  
REAL ESTATE GROUP, LLC; MICHAEL C.  
KENNY; and KENNETH C. SEUS, and MARIANINA  
OIL CORP.

*Defendants.*

-----X  
GETTY PROPERTIES CORPORATION; TYREE  
ENVIRONMENTAL CORPORATION; MICHAEL C.  
KENNY; and KENNETH C. SEUS,

*Third-Party Plaintiffs,*

v.

MARIANINA OIL CORP.,

*Third Party Defendants.*

-----X

**Index No. 13-CV-6282 (NSR)  
Judge Nelson S. Román**

**ANSWER OF DEFENDANT  
SINGER REAL ESTATE GROUP  
LLC TO THIRD AMENDED  
COMPLAINT**

**Trial by Jury Demanded**

Pursuant to Fed. R. Civ. P. 15(a)(3), Defendant Singer Real Estate Group LLC  
("Singer"), by and through its attorneys, Periconi, LLC, answers the Plaintiff's Third Amended  
Complaint (the "Third Amended Complaint") as follows:

**NATURE OF THE ACTION**

1. Denies that Defendant Singer has contaminated Plaintiff White Plains Housing  
Authority's ("Plaintiff's") real property located at 159 South Lexington Ave., White Plains, New  
York, but otherwise admits the allegations of ¶ 1 of the Third Amended Complaint.

**JURISDICTION AND VENUE**

2. States that ¶ 2 of the Third Amended Complaint contains conclusions of law as to which no response is required.

3. States that ¶ 3 of the Third Amended Complaint contains conclusions of law as to which no response is required.

4. States that ¶ 4 of the Third Amended Complaint contains conclusions of law as to which no response is required.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegation that Plaintiff's Notice of Endangerment complies with certain requirements of law, but otherwise admits the allegations contained in ¶ 5 of the Third Amended Complaint.

6. Admits the allegations contained in ¶ 6 of the Third Amended Complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegation that Plaintiff's Notice of Endangerment to Defendant Marianina Oil Corp. (BP Station Defendant Marianina," or "Marianina") complies with certain requirements of law, but otherwise admits the allegations contained in ¶ 7 of the Third Amended Complaint.

8. Admits the allegations contained in ¶ 8 of the Third Amended Complaint.

**THE PARTIES**

9. Admits the allegations contained in ¶ 9 of the Third Amended Complaint.

10. Admits the allegations contained in ¶ 10 of the Third Amended Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 11 of the Third Amended Complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 12 of the Third Amended Complaint.

13. Admits the allegations contained in ¶ 13 of the Third Amended Complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 14 of the Third Amended Complaint, except admits that gasoline was released into the environment at the former Getty Station sometime during and/or before 1988..

15. Admits the allegations contained in ¶ 15 of the Third Amended Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 16 of the Third Amended Complaint..

17. Admits the allegations contained in ¶ 17 of the Third Amended Complaint.

18. Admits the allegations contained in ¶ 18 of the Third Amended Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 19 of the Third Amended Complaint.

20. Admits the allegations of ¶ 20 of the Third Amended Complaint.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 21 of the Third Amended Complaint, except admits that Defendant Michael C. Kenny owned the former Getty Station prior to Singer.

22. Admits the allegations contained in ¶ 22 of the Third Amended Complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 23 of the Third Amended Complaint, except admits that Defendants Kenneth C. Seus owned the former Getty Station prior to Singer.

24. Admits the allegations contained in ¶ 24 of the Third Amended Complaint.

25. Admits the allegations contained in ¶ 25 of the Third Amended Complaint.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 26 of the Third Amended Complaint.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 27 of the Third Amended Complaint

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 28 of the Third Amended Complaint.

**FACTS**

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 29 of the Third Amended Complaint.

30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 30 of the Third Amended Complaint.

31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 31 of the Third Amended Complaint.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 32 of the Third Amended Complaint.

33. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 33 of the Third Amended Complaint.

34. Admits the allegations contained in ¶ 34 of the Third Amended Complaint.

35. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 35 of the Third Amended Complaint.

36. Admits the allegations contained in ¶ 36 of the Third Amended Complaint.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 37 of the Third Amended Complaint, except admits that the inferred direction of groundwater flow reported by Defendant Tyree in various environmental reports made available to Singer is generally in the direction of the plaintiff's property.

38. Admits the allegations contained in ¶ 38 of the Third Amended Complaint.

39. Admits the allegations contained in ¶ 39 of the Third Amended Complaint.

40. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 40 of the Third Amended Complaint.

41. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 41 of the Third Amended Complaint.

42. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 42 of the Third Amended Complaint.

43. Admits the allegations contained in ¶ 43 of the Third Amended Complaint.

44. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 44 of the Third Amended Complaint.

45. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 45 of the Third Amended Complaint, except admits that in late 2011, Tyree, on behalf of Getty, submitted an Ozone Pilot Test Work Plan to the NYSDEC.

46. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 46 of the Third Amended Complaint.

47. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 47 of the Third Amended Complaint, as the referenced document speaks for itself.

48. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 48 of the Third Amended Complaint, as the referenced document speaks for itself.

49. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 49 of the Third Amended Complaint.

50. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 50 of the Third Amended Complaint, and notes that the referenced document speaks for itself.

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 51 of the Third Amended Complaint.

52. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 52 of the Third Amended Complaint, and notes that the referenced document speaks for itself.

53. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 53 of the Third Amended Complaint.

54. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 54 of the Third Amended Complaint, as the referenced document speaks for itself.

55. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 55 of the Third Amended Complaint.

56. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 56 of the Third Amended Complaint.

57. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 57 of the Third Amended Complaint.

58. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 58 of the Third Amended Complaint.

59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 59 of the Third Amended Complaint.

60. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 60 of the Third Amended Complaint.

61. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 61 of the Third Amended Complaint.

62. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 62 of the Third Amended Complaint.

63. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 63 of the Third Amended Complaint.

64. Admits the allegations contained in ¶ 64 of the Third Amended Complaint.

65. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 65 of the Third Amended Complaint.

66. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 66 of the Third Amended Complaint.

67. Admits the allegations contained in ¶ 67 of the Third Amended Complaint.

68. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 68 of the Third Amended Complaint, as the referenced document speaks for itself.

69. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 69 of the Third Amended Complaint, and notes that the referenced document speaks for itself.

70. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 70 of the Third Amended Complaint.

71. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 71 of the Third Amended Complaint, as the referenced document speaks for itself.

72. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 72 of the Third Amended Complaint, and notes that the referenced document speaks for itself.

73. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 73 of the Third Amended Complaint, and notes that the referenced document speaks for itself.

74. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 74 of the Third Amended Complaint, and notes that the referenced document speaks for itself.

75. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 75 of the Third Amended Complaint.

76. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 76 of the Third Amended Complaint.

77. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 77 of the Third Amended Complaint.

78. Denies the allegations contained in ¶ 78 of the Third Amended Complaint.

79. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 79 of the Third Amended Complaint.



80. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 80 of the Third Amended Complaint.

81. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 81 of the Third Amended Complaint.

82. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 82 of the Third Amended Complaint.

83. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 83 of the Third Amended Complaint.

84. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 84 of the Third Amended Complaint.

85. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 85 of the Third Amended Complaint.

86. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 86 of the Third Amended Complaint.

87. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 87 of the Third Amended Complaint.

88. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 88 of the Third Amended Complaint.

89. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 89 of the Third Amended Complaint.

90. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 90 of the Third Amended Complaint.

91. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 91 of the Third Amended Complaint.

92. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 92 of the Third Amended Complaint, and notes that the referenced document speaks for itself.

93. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 93 of the Third Amended Complaint.

94. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 94 of the Third Amended Complaint.

95. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 95 of the Third Amended Complaint.

96. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 96 of the Third Amended Complaint.

97. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 97 of the Third Amended Complaint.

98. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 98 of the Third Amended Complaint.

99. Denies the allegations contained in ¶ 99 of the Third Amended Complaint.

100. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 100 of the Third Amended Complaint.

101. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 101 of the Third Amended Complaint.

102. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 102 of the Third Amended Complaint.

103. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 103 of the Third Amended Complaint.

104. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 104 of the Third Amended Complaint.

105. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 105 of the Third Amended Complaint.

106. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 106 of the Third Amended Complaint.

107. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 107 of the Third Amended Complaint.

108. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 108 of the Third Amended Complaint.

109. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 109 of the Third Amended Complaint.

110. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 110 of the Third Amended Complaint.

111. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 111 of the Third Amended Complaint.

112. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 112 of the Third Amended Complaint.

113. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 113 of the Third Amended Complaint.

114. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 114 of the Third Amended Complaint.

115. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 115 of the Third Amended Complaint.

116. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 116 of the Third Amended Complaint.

117. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 117 of the Third Amended Complaint.

118. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 118 of the Third Amended Complaint.

119. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 119 of the Third Amended Complaint.

119.A. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 119.A. of the Third Amended Complaint.

120. Admits the allegations contained in ¶ 120 of the Third Amended Complaint.

121. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 121 of the Third Amended Complaint.

122. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 122 of the Third Amended Complaint.

123. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 123 of the Third Amended Complaint.

124. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 124 of the Third Amended Complaint.

125. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 125 of the Third Amended Complaint.

126. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 126 of the Third Amended Complaint.

127. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 127 of the Third Amended Complaint.

128. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 128 of the Third Amended Complaint.

129. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 129 of the Third Amended Complaint.

130. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 130 of the Third Amended Complaint.

131. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 131 of the Third Amended Complaint.

132. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 132 of the Third Amended Complaint.

133. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 133 of the Third Amended Complaint.

134. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 134 of the Third Amended Complaint.

135. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 135 of the Third Amended Complaint.

136. Denies the truth of the allegations cited in ¶ 136 of the Third Amended Complaint, insofar as the cited regulations do not “prohibit any proposed development of contaminated properties.”

137. Denies the truth of the allegations contained in ¶ 137 of the Third Amended Complaint, and refers the Court to the Handbook cited therein.

138. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 138 of the Third Amended Complaint.

139. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 139 of the Third Amended Complaint.

140. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 140 of the Third Amended Complaint.

141. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 141 of the Third Amended Complaint.

142. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 142 of the Third Amended Complaint.

143. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 143 of the Third Amended Complaint.

144. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 144 of the Third Amended Complaint.

145. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 145 of the Third Amended Complaint.

**AS AND FOR A RESPONSE TO COUNT I – AGAINST THE GETTY STATION  
DEFENDANTS GETTY, TYREE, MICHAEL C. KENNY, AND KENNETH C. SEUS  
RCRA 42 U.S.C. § 6972**

146. States that Plaintiff's Count I is not alleged against Singer and requires no response. To the extent a response is required, Singer denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶¶ 146-173.

**AS AND FOR A RESPONSE TO COUNT II – AGAINST BP STATION DEFENDANT  
MARIANINA  
RCRA 42 U.S.C. § 6972**

147. States that Plaintiff's Count II is not alleged against Singer and requires no response. To the extent a response is required, Singer Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶¶ 174-192.

**AS AND FOR A RESPONSE TO COUNT III – AGAINST THE GETTY STATION  
DEFENDANTS GETTY, TYREE, MICHAEL C. KENNY AND KENNETH C. SEUS  
AND GETTY STATION DEFENDANT SINGER  
New York State Navigation Law § 181**

148. Answering Defendant repeats and reiterates each and every response in ¶¶s 1 through 147 above as if fully set forth herein.

149. States that ¶ 194 of the Third Amended Complaint contains conclusions of law to which no response is required.

150. States that ¶ 195 of the Third Amended Complaint contains conclusions of law to which no response is required.

151. States that ¶ 196 of the Third Amended Complaint contains conclusions of law to which no response is required.

152. States that ¶ 197 of the Third Amended Complaint contains conclusions of law to which no response is required.

153. States that ¶ 198 of the Third Amended Complaint contains conclusions of law to which no response is required.

154. States that ¶ 199 of the Third Amended Complaint contains conclusions of law to which no response is required.

155. States that ¶ 200 of the Third Amended Complaint contains conclusions of law to which no response is required.

156. Denies the allegations contained in ¶ 201 of the Third Amended Complaint.

157. Denies the allegations contained in ¶ 202 of the Third Amended Complaint.

158. States that ¶ 203 of the Third Amended Complaint contains conclusions of law to which no response is required.

159. Denies the allegations contained in ¶ 204 of the Third Amended Complaint.

160. Denies the allegations contained in ¶ 205 of the Third Amended Complaint.

**AS AND FOR A RESPONSE TO COUNT IV – AGAINST BP STATION DEFENDANT  
MARIANINA  
New York State Navigation Law § 181**

161. States that Plaintiff's Count IV is not alleged against Singer and requires no response. To the extent a response is required, Singer denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶¶ 207-217.



**AS AND FOR A RESPONSE TO COUNT V – AGAINST THE GETTY STATION  
DEFENDANTS GETTY, TYREE, MICHAEL C. KENNY, AND KENNETH C. SEUS  
AND GETTY STATION DEFENDANT SINGER  
Private Nuisance**

162. Answering Defendant repeats and reiterates each and every response in ¶¶ 1 through 161 above as if fully set forth herein.

163. States that ¶ 219 of the Third Amended Complaint contains conclusions of law to which no response is required.

164. States that ¶ 220 of the Third Amended Complaint contains conclusions of law to which no response is required.

165. States that ¶ 221 of the Third Amended Complaint contains conclusions of law to which no response is required.

166. States that ¶ 222 of the Third Amended Complaint contains conclusions of law to which no response is required.

167. Admits the allegations contained in ¶ 223.

168. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 224 of the Third Amended Complaint.

169. Denies the allegations contained in ¶ 225 of the Third Amended Complaint.

170. Denies the allegations contained in ¶ 226 of the Third Amended Complaint.

171. Denies the allegations contained in ¶ 227 of the Third Amended Complaint.

172. Denies the allegations contained in ¶ 228 of the Third Amended Complaint.

173. Denies the allegations contained in ¶ 229 of the Third Amended Complaint.

174. Denies the allegations contained in ¶ 230 of the Third Amended Complaint.

175. Denies the allegations contained in ¶ 231 of the Third Amended Complaint.

**AS AND FOR A RESPONSE TO COUNT VI – AGAINST BP STATION DEFENDANT  
MARIANINA  
Private Nuisance**

176. States that Plaintiff's Count VI is not alleged against Singer and requires no response. To the extent a response is required, Singer denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶¶ 233-242.

**AS AND FOR A RESPONSE TO COUNT VII AGAINST GETTY STATION  
DEFENDANTS GETTY, TYREE, MICHAEL C. KENNY AND KENNETH C. SEUS  
Trespass**

177. States that Plaintiff's Count VII is not alleged against Singer and requires no response. To the extent a response is required, Singer Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶¶ 244-253.

**AS AND FOR A RESPONSE TO COUNT VIII – AGAINST THE GETTY STATION  
DEFENDANTS GETTY, TYREE, MICHAEL C. KENNY, AND KENNETH C. SEUS  
AND GETTY STATION DEFENDANT SINGER  
Negligence**

178. Answering Defendant repeats and reiterates each and every response in ¶¶ 1 through 177 above as if fully set forth herein.

179. States that ¶ 255 of the Third Amended Complaint contains conclusions of law as to which no response is required.

180. States that ¶ 256 of the Third Amended Complaint contains conclusions of law to which no response is required.

181. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 257 of the Third Amended Complaint.

182. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 258 of the Third Amended Complaint.

183. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 259 of the Third Amended Complaint.

184. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶ 260 of the Third Amended Complaint.

185. Denies the allegations contained in ¶ 261 of the Third Amended Complaint.

186. Denies the allegations contained in ¶ 262 of the Third Amended Complaint.

187. Denies the allegations contained in ¶ 263 of the Third Amended Complaint.

188. Denies the allegations contained in ¶ 264 of the Third Amended Complaint.

189. Denies the allegations contained in ¶ 265 of the Third Amended Complaint.

**AS AND FOR A RESPONSE TO COUNT IX –  
AGAINST BP STATION DEFENDANT MARIANINA  
Negligence**

190. States that Plaintiff's Count IX is not alleged against Singer and requires no response. To the extent a response is required, Singer denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶¶ 266-277.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

191. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations or by the equitable doctrine of laches.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

192. At all relevant times, the actions of the Answering Defendant complied with and were undertaken pursuant to the applicable federal, state, and local laws, rules, regulations and specifications and adequately addressed any contamination emanating from the former Getty Station.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

193. Plaintiff's claims are barred in whole or in part because federal, state and/or local authorities and agencies, including but not limited to the New York State Department of Environmental Conservation, have mandated, directed, approved, and/or ratified the alleged actions or omissions of the Defendants.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

194. All acts, conduct and remediation of the Defendants, as alleged in the Third Amended Complaint, were based upon the state of knowledge existing at all material times alleged in the Third Amended Complaint, were reasonable under the circumstances to protect human health and the environment.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

195. The relief sought by the Third Amended Complaint is, in whole or in part, within the particular expertise of and is being addressed by the State of New York, and its relevant agencies, and thus this Court should decline to exercise jurisdiction over this matter pursuant to the doctrine of primary jurisdiction.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

196. Plaintiff has failed to exhaust its administrative remedies.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

197. Plaintiff's claims are barred, in whole or in part, because the plaintiff's injuries were caused, in whole or in part, by the negligence, fault or wrongful conduct of the Plaintiff or third parties, and any recovery is subject to reduction or offset under the doctrines of comparative fault and contributory negligence.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

198. Answering Defendant did not breach any implied or express warranties or any warranties created by law.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

199. Plaintiff's claims for punitive damages are in contravention of the Answering Defendant's rights under the Constitutions of the United States and other states, including:

- a. The Commerce Clause of Article I, Section 8 of the United States Constitution;
- b. The Contracts Clause of Article I, Section 10 of the United States Constitution;
- c. The prohibition against *ex post facto* laws embodied in Article I, Section 10 of the United States Constitution;
- d. The Supremacy Clause of Article IV the United States Constitution;
- e. The Free Speech Clause of the First Amendment to the United States Constitution;
- f. The Due Process Clause of the Fifth Amendment to the United States Constitution;

- g. The Takings Clause of the Fifth Amendment to the United States Constitution;
- h. The Right to Counsel provision in the Sixth Amendment to the United States Constitution;
- i. The Right to Trial by Jury provision in the Seventh Amendment of the United States Constitution;
- j. The Right to Trial by Jury provision in the Seventh Amendment to the United States Constitution
- k. The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution; and
- l. Similar or corresponding provisions of the constitution of the State of New York.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

200. No alleged act or omission of the Answering Defendant was malicious, willful, or reckless and, therefore, any award of punitive damages is barred.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

201. With respect to Plaintiff's demand for punitive damages, the Answering Defendant specifically incorporates by reference any and all standards or limitations regarding the determination of enforceability of punitive damages awards that are set forth in *Phillip Morris USA v. Williams*, 127 S.Ct. 1057 (2007), *State Farm Mutual Automobile Insurance Co., v. Campbell*, 528 U.S. 408 (2003), *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996) and similar state cases.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

202. Because of the lack of clear standards, any imposition of punitive damages against the Answering Defendant would be unconstitutionally vague and/or overboard.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

203. Plaintiff's claim for punitive damages is subject to the limitations and requirements of any applicable state laws.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

204. The Answering Defendant is entitled to, and claims the benefit of, all defenses and presumptions set forth in or arising from any rule of law or statute in New York State and/or any other law or statute that may be applicable.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

205. Plaintiff's claims should be dismissed for failure to meet the applicable minimum pleading standards.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

206. Plaintiff claims are barred against the Answering Defendant by the common law because (1) the Answering Defendant exercised due care with respect to any wastes or substances concerned; (2) all conditions, injuries, costs, damages and expenses for which Plaintiff seeks to recover were caused solely by the acts or omissions of third parties other than (a) its employees or agents or (b) persons whose acts or omissions occurred in connection with a contractual relationship, existing directly or indirectly, with it; and (3) the Answering Defendant took precautions against foreseeable acts and omissions of any such third party in the consequences that foreseeably could result from such acts and omissions.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

207. The United States Constitution and applicable state law prevent the retroactive imposition of liability, joint and several or otherwise, for acts and/or omissions of the Answering Defendant that were in compliance with applicable local, state and federal laws and regulations in effect at the time of such acts and/or omissions.

**AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE**

208. The Answering Defendant was not provided with a reasonable and adequate opportunity to cure the defect alleged by the Plaintiff.

**AS AND FOR A NINENEENTH AFFIRMATIVE DEFENSE**

209. The Answering Defendant reasonably and adequately addressed, and continues to address, any environmental issues that Plaintiff alleges are affecting its property.

**AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE**

210. The Answering Defendant denies that it is liable for any claims alleged in the Third Amended Complaint, but in the event it is found liable, the Answering Defendant is entitled to an offset against said alleged liability for the greatest of (1) any amounts actually paid by any person or entity heretofore or hereinafter for any of the injuries, costs, damages, and expenses alleged in the Third Amended Complaint, or (2) any amounts stipulated or otherwise agreed to in any release or covenant not to sue any person or entity heretofore or hereinafter for any of the injuries, costs, damages and expenses alleged in the Third Amended Complaint; or (3) the applicable share of the liability of any person or entity that heretofore has received, or hereinafter receives, any release form liability or covenant not to sue with respect to injuries, costs, damages and expenses alleged in the Complaint.



**AS AND FOR A TWENTY FIRST AFFIRMATIVE DEFENSE**

211. The Plaintiff cannot recover from Answering Defendant more than Answering Defendant's fair, equitable and proportionate share of the costs, damages and other expenses sought by Plaintiff, or otherwise recover more than the amount of such relief for which Answering Defendant may be liable.

**AS AND FOR A TWENTY SECOND AFFIRMATIVE DEFENSE**

212. As this Court has no federal law claims against Answering Defendant, and only has supplemental jurisdiction over state law statutory and common law claims, as a federal court it is powerless to impose punitive damages based on purely state law claims.

**AS AND FOR A FIRST CROSS-CLAIM AGAINST  
DEFENDANTS GETTY, KENNY, SEUS, TYREE AND MARIANINA  
New York Navigation Law § 181**

213. Answering Defendant repeats and reiterates each and every response in ¶¶ 1 through 212 above as if fully set forth herein.

214. Navigation Law ("NL") § 181(1) provides that any person who has discharged petroleum shall be strictly liable, without regard to fault, for all cleanup and removal costs, and all direct and indirect damages, no matter by whom sustained.

215. NL § 181(5) provides a private cause of action for any person injured by petroleum discharge directly against the person who discharged the petroleum.

216. Defendant Getty is a "discharger" within the meaning of NL § 181.

217. Defendant Getty, through its operation of a gas station at the former Getty Station (prior to Singer's ownership), caused or contributed to the illegal discharge of petroleum at the former Getty Station.

218. Defendant Kenny is a "discharger" within the meaning of NL § 181.

219. Defendant Kenny, through his ownership of the property on which Defendant Getty operated its gas station, caused, contributed, or otherwise failed to prevent the illegal discharge of petroleum at the former Getty Station prior to Singer's taking title to same.

220. Defendant Seus is a "discharger" within the meaning of NL § 181.

221. Defendant Seus, through his ownership of the property on which Defendant Getty operated its gas station, caused, contributed, or otherwise failed to prevent the illegal discharge of petroleum at the former Getty Station prior to Singer's taking title of same.

222. Defendant Tyree is a "discharger" within the meaning of NL § 181.

223. Defendant Tyree, through its operations at the former Getty Station and the adjacent property owned by the Plaintiff, caused, contributed, or otherwise failed to prevent the illegal discharge of petroleum at the former Getty Station.

224. Defendant Marianina is a "discharger" within the meaning of NL § 181.

225. Defendant Marianina, through its ownership of and operations at the retail gasoline station located at 34 East Post Road, White Plains New York (the "BP Station"), caused contributed, or otherwise failed to prevent the illegal discharge of petroleum at the BP Station.

226. Singer has been damaged by the acts and omissions of Defendants Getty, Kenny, Seus, Tyree, and Marianina that resulted in a discharge of petroleum at the former Getty Station prior to Singer's ownership of the former Getty Station and/or a discharge of petroleum at the BP Station.

227. Defendants Getty, Kenny, Seus and Tyree are strictly liable pursuant to NL § 181 for all investigative, cleanup, and removal costs that have been or will be incurred by Singer as a result of Getty's, Kenny's, Seus', Tyree's, and Marianina's illegal discharges.

228. Defendants Getty, Kenny, Seus, Tyree and Marianina are strictly liable for all “indirect damages” relating to the investigation, cleaning, and removal of petroleum, including environmental consultant and attorney’s fees relating thereto, as well as property carrying costs and lost income and/or profits, pursuant to NL § 181(1).

**AS AND FOR A SECOND CROSS-CLAIM AGAINST DEFENDANTS GETTY, KENNY,  
SEUS, TYREE, AND MARIANINA  
Navigation Law § 176(8)**

229. Answering Defendant incorporates by reference the allegations set forth in ¶¶ 1 through 228 above as if fully set forth herein.

230. Defendants Getty, Kenny, Seus, Tyree, and Marianina are liable to Singer in contribution pursuant to NL § 176(8) for all cleanup and removal costs and direct and indirect damages as a consequence of the discharge of petroleum at the former Getty Station and/or at the BP Station.

**AS AND FOR A THIRD CROSS-CLAIM AGAINST DEFENDANTS GETTY, KENNY,  
SEUS, TYREE AND MARIANINA  
Contribution/Indemnity**

231. Answering Defendant repeats and reiterates each and every response in ¶¶ 1 through 230 above as if fully set forth herein.

232. Defendants Getty, Kenny, Seus, Tyree and Marianina breached their contractual, common law, and/or statutory duties to Singer, causing injury to Singer.

233. To the extent that Singer is liable to Plaintiff, Defendants Getty, Kenny, Seus, Tyree, and Marianina are liable for indemnification and/or contribution pursuant to the New York Navigation Law and common law to Singer in that their conduct, malfeasance and/or negligence caused the harm that gave rise to Singer’s liability to Plaintiff.

**WHEREFORE**, Singer respectfully requests that the Court dismiss the Plaintiff's Third Amended Complaint, find that Defendants Getty, Kenny, Seus, Tyree, and Marianina have indemnified Singer, and grant to Singer such other and further relief as this Court deems just and proper.

**REQUEST FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedures 38, Answering Defendant respectfully requests that this matter be tried by jury.

Dated: September 11, 2015  
New York, New York

Respectfully submitted,



James J. Periconi (JP-3184)

Matthew R. Jokajty (MJ-1985)

PERICONI, LLC

260 Madison Avenue, 15<sup>th</sup> Floor

New York, New York 10016

*Attorneys for Defendant Singer Real Estate Group, LLC*

**CERTIFICATE OF SERVICE**


I hereby certify that on September 11, 2015, I caused the foregoing

**ANSWER OF DEFENDANT SINGER REAL ESTATE GROUP LLC TO THIRD  
AMENDED COMPLAINT**

to be served upon counsel for Plaintiff and all Defendants in this action via ECF.

I hereby also certify that on September 11, 2015 I served a copy of the above referenced Answer of Singer Real Estate Group LLC on Defendant Marianina Oil Corp. via Certified Mail, Return Receipt Requested, postage pre-paid at the following address:

Marianina Oil Corp.  
34 East Post Road  
White Plains, NY 10601

  
Matthew R. Jokajtys, Esq.  
PERICONI, LLC  
260 Madison Avenue, 15<sup>th</sup> Floor  
New York, New York 10016

TO:

Norman W. Bernstein, Esq.  
Inga Caldwell, Esq.  
N.W. BERNSTEIN & ASSOCIATES, LLC  
800 Westchester Avenue, N319  
Rye Brook, New York 10573  
nwbernstein@nwblc.com  
icaldwell@nwblc.com

*Counsel for Plaintiff White Plains Housing Authority*

Matthew G. Parisi, Esq.  
BLEAKLEY PLATT & SCHMIDT, LLP  
One North Lexington Avenue  
White Plains, NY 10601  
mparisi@bplaw.com

*Counsel for Defendants Getty Properties Corporation, Tyree Environmental Corporation,  
Michael C. Kenny, and Kenneth C. Seus*